ACQUISITIONS (IRON ORE): THE CVRD CASE

Subject: Acquisitions
Conditions

Industry: Parties
(Some implications for other industries)

Parties: Companhia Vale do Rio Doce (CVRD) (Brazil)
Mitsui & Co. Ltd (Mitsui) (Japan)
Caemi Mineração e Metalurgia SA (Caemi) (Brazil)
Quebec Cartier Mining Company (QCM) (Canada)
Mineração Brasilieras Reunidas (MBR) (Brazil)

Source: Commission Statement IP/01/1515, dated 30 October 2001

(Note. In this case, the participants are from Brazil, Japan and Canada: not one is from the European Union. The interest of the case lies in the very fact that a joint acquisition of a Brazilian company, by another Brazilian company and a Japanese company, should have been the subject of an investigation and a decision by the Commission of the European Communities. It is a logical extension of the line of cases in which the activities of United States companies have come under scrutiny in Brussels. As in the United States cases, the rationale here is that, although the companies concerned are outside the European Union, their trading operations in or with the European Union bring them within the ambit of European competition laws. Otherwise, the case has no unusual features. It originally raised competition concerns; but these were resolved by the divestiture of certain related interests. These interests were Canadian.)

The Commission has given the go-ahead for the proposed acquisition of joint control of Brazilian iron ore mining company Caemi by CVRD, another Brazilian iron ore producer, and Japanese trading company Mitsui. The Commission has found that the operation would have led to the creation or strengthening of a dominant position in the market for the seaborne supply of iron ore pellets. However, the parties to the merger have undertaken to dispose of Caemi's 50% interest in QCM, a Canadian iron ore producer, which removes the Commission's competition concerns.

Under the terms of the proposed transaction, Companhia Vale do Rio Doce (CVRD) and Mitsui & Co. Ltd (Mitsui) will acquire joint control of Caemi Mineração e Metalurgia SA (Caemi). Caemi's assets principally consist of Brazilian iron ore mining company Mineração Brasilieras Reunidas (MBR) and a 50-percent stake in Canadian iron ore producer Quebec Cartier Mining Company (QCM). Mitsui already holds 40% of the voting shares of Caemi. In a first stage, Mitsui will acquire the outstanding 60% of Caemi's voting shares, which are currently in private hands. In the second stage of the operation, 50% of Caemi's voting shares will be purchased by CVRD.

The deal was notified for clearance on 18 June 2001 in the European Economic Area - the fifteen European Union states plus Norway, Iceland and Liechtenstein - because the merging companies' turnover in Europe meets the thresholds set out in the Merger Regulation, the European Community's merger control law. On 3 July 2001, the Commission decided to open an in-depth investigation.

The merger will have an impact on competition in the supply of iron ore, which is used almost exclusively in steel making. It is sold in three forms: sinter fines, lump and pellets. Most iron ore is sold, in all three forms, for transformation into steel using the basic oxygen furnace method. However, some iron ore (known as direct reduction ore) is sold, in the form of lump and pellets, for the production of steel using an electric arc furnace.

The competitive impact of the merger was assessed in relation to the supply of seaborne iron ore, as Western European steel producers - due to an absence of local supplies - depend almost exclusively on iron ore imported from mines located a long way from Europe. Iron ore transported by ship represents about 45% of all traded iron ore; and the main sources of seaborne supply are located in Brazil and Australia. Participation in the seaborne trade requires access to a specific infrastructure such as dedicated railways, suitable for the transportation of very large tonnages, and deep water harbours. CVRD is the world's largest producer of seaborne sinter fines and pellet iron ore, followed by the Australian-based mining companies Rio Tinto and BHP.

The Commission's investigation has shown that the proposed transaction would lead to the creation, if not the strengthening, of a dominant position in the seaborne supply of iron ore pellets; the new entity would hold a particularly high share of this market in the wake of the merger. The investigation revealed that the remaining competitors, principally Rio Tinto and BHP, as well as the smaller Swedish company LKAB, would not be likely to be able to constrain effectively Mitsui/CVRD/Caemi's market behaviour. For similar reasons, the Commission concluded that the operation would also lead to the creation or strengthening of a dominant position in the seaborne market for direct reduction iron ore.

On 5 October 2001, the parties offered two commitments designed to remove the competition concerns identified by the Commission. The first consisted of an offer to divest Caemi's 50% interest in QCM, thereby eliminating the overlap between CVRD's and Caemi's production of iron ore pellets. As a result, the commitment removes the Commission's competition concerns in relation to the supply of these products, and in relation to the supply of direct reduction ore. This conclusion has been borne out by market enquiries - addressed to competitors and customers of the merging iron ore companies - regarding both the future viability of QCM and regarding its ability to provide effective competition in the markets concerned.

The second commitment consisted of an offer to establish a new corporate entity - dubbed "New Caemi" by the merging companies - which would incorporate MBR, Caemi's Brazilian iron ore mining operation, and Ferteco, an iron ore

mining company which CVRD recently acquired from German steelmaker Thyssen Krupp. Although Mitsui and CVRD would have equal ownership of the new company, and equal rights to appoint directors to its Board, Mitsui would have a casting vote, subject only to CVRD's right to veto fundamental changes to New Caemi's business. This commitment was not, however, regarded by the Commission as necessary for the clearance of the transaction, since the competitive concerns raised by the operation were fully addressed by the divestiture of QCM.

CVRD is a diversified mining company with its headquarters in Rio de Janeiro, Brazil. It is the world's largest iron ore producer and the leading supplier of iron ore to Europe; it also has significant interests in related commercial transport infrastructure, including railways and port operations. Since 1999, CVRD has acquired control or joint control of the Brazilian iron ore mining companies Samitri, Socoimex and Samarco. Earlier this year, it purchased the Brazilian iron ore mining company Ferteco from Thyssen-Krupp. With the acquisition of Caemi, CVRD will control all Brazilian mining companies exporting iron ore.
Mitsui, based in Tokyo, is a Japanese trading concern. It has worldwide trading activities in various commodities including iron ore. Mitsui holds minority stakes in a number of iron ore mining companies, including a significant stake in the world's second largest individual iron ore mine, Robe River in Australia. It also has a controlling stake in a small Indian iron ore producer. Caemi is a Brazilian holding company headquartered in Rio de Janeiro which holds equity investments in a number of Brazilian and Canadian mines producing iron ore as well as other metals and minerals. Caemi also has interests in a number of related logistics businesses. It is the world's fourth largest iron ore producer. ■

The IATA (Freight) Case

Following Commission objections in May this year, the International Air Transport Association (IATA) has agreed to end the joint setting of rates for the air transport of freight within the European Economic Area. The Commission welcomes this decision, which will lead to greater competition in the setting of air cargo shipment rates to the benefit of European exporters and the European economy as a whole. Until June 1997, the activities of the IATA tariff conferences for freight shipment within the European Economic Area were exempted under Commission Regulation EC/1617/93. The Commission ended the block exemption because conference tariffs were considerably higher than market prices and price consultations no longer appeared justified. IATA then applied for an individual exemption, arguing that tariff conferences facilitated cargo interlining. Interlining occurs when cargo is carried for all or part of the journey by an airline other than the airline selling the ticket; cargo tariffs fixed by the tariff conferences are then used to calculate each carrier's compensation. However, the Commission took the view that this 55 year-old restrictive system was no longer necessary to provide customers with efficient interlining services; and IATA has agreed to end the joint setting of cargo rates within the EEA from the beginning of 2002, when rates will be fixed individually by each carrier.

Source: Commission Statement IP/01/1433 dated 19 October 2001